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John Viernes, Jr.

Director

1000 South Fremont Avenue
Building A-9 East, Third Floor
Alhambra, CA 91803

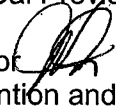
TEL (626) 299-4193 • FAX (626) 458-7637

www.publichealth.lacounty.gov

BULLETIN NO. 10-05

December 7, 2010

TO: Prospective Drug/Medi-Cal Providers

FROM: John Viernes, Jr., Director 
Substance Abuse Prevention and Control

SUBJECT: **PERFORMANCE SECURITIES**

These guidelines follow Substance Abuse Prevention and Control's (SAPC) October 15, 2010 memorandum, with which SAPC provided an application packet for contracting with the County of Los Angeles for Drug/Medi-Cal (DMC) services. Included in the application packet is Attachment A, which lists the minimum requirements that agencies must meet in order to contract with SAPC.

The requirement regarding performance securities generated many questions from applications. Performance securities may take the form of certificates of deposit, letters of credit, or any other form of "collateral" that the County may access in the event the agency discontinues its DMC program without advance notice, insolvency, or termination for cause. This Bulletin serves to clarify the County's requirements about performance securities, and how and when the applicant's performance securities or collateral will be accessed by the County.

The following are the County/SAPC guidelines on performance securities and forms of collateral:

1. Certificate of Deposit (CD)
 - a) Purpose: The Contractor may opt to provide performance security in the form of a CD. The County will have the right to cash the CD if the Contractor fails to provide the agreed-upon services, discontinues its DMC program without advance notice, or if the agency becomes insolvent. The County alone determines the Contractor's compliance with the terms of the contract. The County will access the CD once County Counsel approves termination of the contract.

- b) CD requirements: The maturity of the CD must not be prior to the fourth year Contractor gains experience as provider of treatment services for substance use disorder. The CD also must comply with the minimum criteria and standards established by the County Treasurer and Tax Collector (Attachment B).
- c) CD amount: The amount of the CD should be equal to the estimated annual County maximum obligation of the agreement and will be adjusted whenever there is a change in the annual maximum obligation.

2. Letter of Credit (LOC)

- a) Purpose: This form of performance security allows the County to draw money from a financial institution (bank) if the Contractor does not meet the specific obligations stipulated in the agreement, discontinues its DMC program without advance notice, or if the agency becomes insolvent.
- b) LOC requirements: The LOC must specify precisely what triggers the County's right to access the funds. The LOC must also be irrevocable, so that the Contractor cannot withdraw the LOC without a written release from the County. The LOC must be maintained throughout the term of the agreement, or until the agency gains four years of experience as a treatment service provider for substance use disorder, whichever occurs sooner. Like the CD, the LOC must comply with the minimum criteria and standards established by the County Treasurer and Tax Collector (see Attachment B).

The following must be specifically written in the LOC as conditions that will trigger the County's right to access the funds: "The County of Los Angeles will have the right to access the funds specified in this LOC if one or more of the following occurs: (a) the County gives notice to Contractor that it is terminating Contractor's agreement for Drug/Medi-Cal services for serious deficiencies found during an audit, including loss of Drug/Medi-Cal certification; (b) the County gives notice to Contractor that it is terminating Contractor's agreement because Contractor has discontinued its DMC program without advance notice; or (c) the County gives notice to Contractor that it is terminating Contractor's agreement because the agency has become insolvent. The County will access the LOC once County Counsel finds there is sufficient ground to terminate the contract."

- c) LOC amount: The amount of the LOC should be equal to the estimated annual County maximum obligation of the agreement, and will be adjusted whenever there is a change in the annual maximum obligation.

3. Time line

Upon submission of a CD or an LOC by the applicant, SAPC will forward it to the Treasurer and Tax Collector's office for review and approval of the financial institution issuing the CD or LOC. The Treasurer and Tax Collector will complete its review in

approximately ten business days. Upon approval, SAPC will present a County agreement to the applicant for signature, after which the agreement will be submitted to the Department's Contracts and Grants Division for execution.

If you have any questions or need additional information, please contact Michael Kerr at mkerr@ph.lacounty.gov, or the Contract Program Auditor assigned to review your application.

JV:dhd

Attachments

c: Treasurer and Tax Collector's Office
 County Counsel
 Jonathan E. Freedman
 Leo Busa
 Dorothy de Leon
 Michael Kerr

COUNTY OF LOS ANGELES - DEPARTMENT OF PUBLIC HEALTH

SUBSTANCE ABUSE PREVENTION AND CONTROL

MINIMUM REQUIREMENTS TO CONTRACT WITH THE COUNTY OF LOS ANGELES
FOR DRUG/MEDI-CAL SERVICES

1. Agencies must be certified by the State Department of Alcohol and Drug Programs (SDADP) to operate and maintain an alcohol and/or other drug abuse or treatment facilities at the time of application for a County control.
2. Agencies must be in good standing with both SDADP and the County of Los Angeles, based on a review of prior audits and performance reviews. If the agencies had prior County contracts, those contracts must have been in good standing and were in compliance with applicable laws and specific contract requirements.
3. Agencies must have a minimum of four (4) years experience in providing substance abuse prevention or treatment services and pass a financial viability test based on its financial records. In lieu of the aforementioned, the agency may be considered for a contract aware contingent on proof of financial viability, e.g., performance bonds, certificate of deposits, or any other form of financial pledge that the County could access in the even the agency discontinues its DMC program without advance notice to the County, or if the agency becomes financially insolvent. The amount of would depend on the projected number of clients to be served by the agency, but no less than \$100,000. The agency must also be able to continue providing services for 60 days without payment from the County.
4. Agencies must show proof of the availability of credentialed, licensed, and experienced staff, as required by federal, State, and County laws, guidelines, and other requirements, some of which are listed below:
 - Counseling staff must have at least two years of experience in providing alcohol and/or other drug abuse information to persons with substance use disorder in a classroom setting. Counselors should be license, certified, or registered to obtain certification in accordance with Title 9, CCR, Div. 4, Chapter 8, Counselor Certification Regulations.
 - Program director/administer must have two years experience providing alcohol and/or other drug abuse services, one year supervising personnel, and one year managing accounting processes that include budgets.
 - Staff employed by agencies to serve the youth population must have a Live Scan fingerprint check for criminal history background through the Department of Justice and Federal Bureau of Investigation prior to employment.

5. Agencies licensed and certified to provide Narcotic Treatment Program (NTP) services must agree to comply with the County's current NTP operating guidelines and practices.
6. Agencies must be able to begin providing services within thirty (30) days of the contract award.

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**CERTIFICATES OF DEPOSIT
Minimum Criteria and Standards**

1. All deposits are to be federally insured through the FDIC or FSLIC (generally up to \$100,000) or shall meet the following ratings from Moody's and/or Standard and Poor's rating agencies:

If the term is less than three (3) years, the minimum ratings are:

	<u>Moody's</u>	<u>Standard and Poor's</u>
Bank Deposits:	A2 or better	A or better
Bank Financial Strength:	B or better	

If the term is three (3) years or greater, the minimum ratings are:

	<u>Moody's</u>	<u>Standard and Poor's</u>
Bank Deposits:	Aa1 or better	AA+ or better
Bank Financial Strength:	B or better	

2. The CD shall be in the County's name.
3. The maturity of the CD may not be prior to the expiration date for performance or other provisions of the performance agreement.
4. The CD at the time of deposit shall be at least equal to the cash amount then required under the terms of the performance agreement.
5. A provision shall exist which states that the County may cash the CD only in the event of a default by the Vendor. Written documentation from the Department concerning the Vendor's default will be required prior to cashing of the CD. Vendor agrees to be held responsible for any penalties or loss of interest associated with early withdrawal of the CD in the event of default by the Vendor.
6. Any interest paid on the CD received by the County shall be paid to the Vendor by the County within ten (10) working days of receipt.
7. Vendor assumes all risk of loss of principal and interest from the CD should the depository be declared insolvent or fail into default and fail to pay principal or interest.
8. Written documentation from the Department of the termination of the performance agreement is required prior to the release of the CD to the Vendor.
9. The names of the persons authorized to give or receive written notice on behalf of the Department and exemplars of their respective signatures are required.

**CERTIFICATES OF DEPOSIT
MINIMUM CRITERIA**

All deposits are to be federally insured through the FDIC and shall meet the following ratings from the Gorry Findley Bank Rating Services as follows:

If the amount is less than \$500,000, the minimum ratings are:

Financial Quality Rating Code:	A (Above Average)
Amount Limit Code:	7 (Up to \$500,000)
Maturity Limit Code:	c (Five year limit)

If the amount is \$500,000 or greater, the minimum ratings are:

Financial Quality Rating Code:	A+ (Above average with good asset qualities, financial solvency, and operating performances)
Amount Limit Code:	5 (Up to \$2.5 million)
Maturity Limit Code:	c (Five year limit)

OKK
CD minimum.doc
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